

REMARKS

By this amendment, claims 14-17 have been amended and new claims 18 and 19 have been added to place this application in condition for allowance. Currently, claims 1, 3 and 5-19 are before the Examiner for consideration on their merits.

Claims 14 and 15 are revised to better clarify the cycle of the invention. These claims cover the embodiment wherein the line of adhesive touches or goes beyond a defined longitudinal line of the elastic member.

Claims 16 and 17 define the line as going beyond the defined longitudinal line.

Claims 18 and 19 characterize the position of the lines with respect to the topsheet and backsheet that are linked together using the adhesive-containing elastic member. More specifically, the longitudinal line defined in claims 14 and 15 is now linked to the topsheet

In review, the Examiner has maintained the rejection based on Van Eperen et al. (Van Eperen), and has also now applied United States Patent No. 6,077,375 to Kwok to reject claims 6, 9, 11, 13, 15, and 17.

Regarding Kwok, the Examiner points to col. 5, lines 5-10 to contend that the Kwok adhesive meets the limitation of claim 13. Applicant disagrees with this conclusion since the adhesive of Kwok could be considered to be on an underside but still not meet the claim limitation. For example, the underside could be considered to be the circumference of the strand that extends below a line running along a side of the strand but not reaching the line that defines the bottom of the strand. Given Kwok's draping methodology, Applicants wonder how the draped adhesive would go beyond the line running along the bottom of the strand. If the Examiner maintains this position, the Examiner is called upon to provide objective evidence to support such an interpretation of the teachings of Kwok, since on its face, Kwok does not appear to support such an interpretation.

The same arguments are made for claim 12 and Van Eperen.

With regard to newly added claims 14 and 15, the Examiner took the position that claim 14 does not distinguish over Van Eperen if the starting point is selected on a longitudinal line that runs along the side of the elastic member shown in Figure 13 as

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opposed to having the starting point begin on a longitudinal line that ran along the top of the elastic member, again when viewing Figure 13. Similarly, the Examiner contended that claim 15 does not distinguish over Kwok for the same reason; the starting point can begin on a longitudinal line on the side of the elastic member of Figure 3 of Kwok.

A central issue in this application is whether the adhesive of either Van Eperen or Kwok as it is laid onto the adhesive either touches or goes beyond a "longitudinal line" that runs along the underside of the elastic member or opposite the top of the elastic member receiving the adhesive.

Applicants continue to contend that the adhesive of Van Eperen or Kwok does not touch or go beyond the "longitudinal line", and the Examiner is, at best, speculating that this occurs in either reference. This speculation cannot justify the rejection of either claim 1 or claim 6 under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a) and these rejections are believed to still be improper.

Furthermore, Applicants contend that claim 14, as amended, is patentable over Van Eperen, and claim 15, as amended, is patentable over Kwok. As mentioned above, each of these claims has been amended to further define the relationship of the line of adhesive with respect to the adhesive member. Each claim has two aspects to it. A first aspect defines a starting point of the cycle. This starting point begins a path of the continuous line. The path crosses diametrically opposed lines. Viewing this with respect to Figure 2, the starting point can be envisioned as P with the first longitudinal line being 17. The path crosses both of the diametrically opposite lines on the adhesive in the cycle. Although not marked, these lines would correspond to the lines on the top and bottom of the strand of Figure 2.

A second aspect of claim 14 is the touching or going beyond of the path with respect to the first longitudinal line. In Figure 2, the unique path of the adhesive results in contact at S and T (going over the first longitudinal line) and W before ending the cycle. In the embodiment wherein the path touches the line, there would be a single point of contact rather than the two points S and T. The two embodiments are represented in the claim language as the path touching or going beyond another point on the first longitudinal line.

It is respectfully submitted that this arrangement is not found in either Van Eperen or Kwok. No matter where the starting point is selected in the structures of this prior art, one of the claim aspects discussed above is not met. The lines of Van Eperen or Kwok may pass through two diametrically opposed lines, but then they do not touch the first longitudinal line at the starting point and the other point. Alternatively, the lines of Van Eperen may touch two points on the longitudinal line, but then they do not pass though the diametrically opposing line that are on a plane perpendicular to the plane containing the first longitudinal line. Therefore, these claims are separately patentable over the applied prior art on the grounds that anticipation is not established by either of the applied prior art references. Moreover, there is no reason to modify the pattern of either Van Eperen or Kwok without resorting to Applicants' disclosure, and such resort is the impermissible use of hindsight.

It is further contended that new claims 18 and 19 are also patentable over Van Eperen and Kwok. As noted above, these claims link the adhesive pattern to the backsheet and topsheet. With reference to Figure 2 again, it can be seen that the path RSTU is against topsheet 2, and claims 18 and 19 state that bisecting plane containing the first longitudinal line is perpendicular to plane of the topsheet and backsheet. This arrangement is not explicitly disclosed in either Van Eperen or Kwok. Van Eperen has no disclosure whatsoever as to how the adhesive-containing strand would be used. Kwok only teaches that the adhesive is applied uniformly to the strand for uniform bonding, see col. 6, lines 48-61. Thus, there is no explicit disclosure that the adhesive-containing strand of either Van Eperen or Kwok is used with a topsheet and backsheet as defined in claims 18 and 19, and there can be no basis to allege anticipation.

It is also argued that neither of Van Eperen or Kwok establishes obviousness, since there is no objective basis to draw the conclusion that one of skill in the art would be motivated to use the strands of Van Eperen in the manner specified in claims 18 and 19. If anything, Kwok teaches away from the arrangement of claim 19 since Kwok seeks a uniform bonding with the substrate, and one of skill in the art would not seek the non-uniform bonding created by the arrangement defined by claim 19. Without such an objective basis, the Examiner can only use hindsight to reject these claims, and such a

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rejection could not be sustained on appeal.

Moreover, there are significant advantages of using the adhesive-containing elastic member as described in claims 18 and 19. That is, having the adhesive follow the path as defined in claims 18 and 19 with respect to the top- and backsheets results in improvements in terms of reduced gathers. Increasing the contacting part of the adhesive in one plane and shortening the interval between contacting parts of the adhesive in the imaginary line 18 has the advantageous effect that this does not make so many gathers from on the backsheet as compared to the topsheet. In contrast, a pattern wherein the height of the line does not exceed the circumference does not provide this benefit. This advantage is further substantiation that the configuration of claims 18 and 19 is not an obvious modification of either Van Eperen or Kwok.

In light of the arguments and amendments above, it is respectfully submitted that neither Van Eperen nor Kwok establish a *prima facie* case of anticipation or obviousness against independent claims 1 and 6, and dependent claims 14-19. Therefore, these claims, along with their respective dependent claims, should be passed onto issuance.

In light of the past interviews, the Examiner is respectfully requested to telephone the undersigned if one or more of claims 14-19 contains allowable subject matter. In this way, the appropriate amendments may be made without the need for issuance of a further office action.

In light of the above, the Examiner is respectfully requested to examine this application and pass claims 1, 3, and 5-19 onto issuance.

The above constitutes a complete response to all issues raised in the Office Action dated January 27, 2005.

Again, reconsideration and allowance of this application is respectfully solicited.

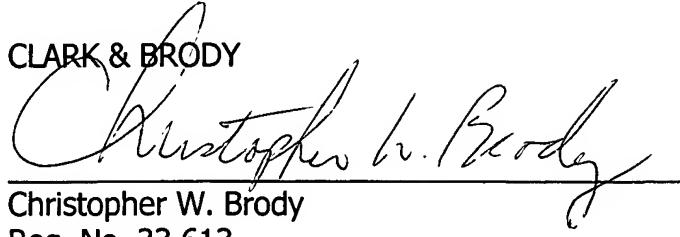
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Respectfully submitted,

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